

## EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2009-0406-PWS-E TCEQ ID: RN101219384 CASE NO.: 37340

RESPONDENT NAME: FOSTER CONSOLIDATED INVESTMENTS, LLC DBA CHAPARRAL III

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATIONS OCCURRED:</b> Intersection of Mesheppard Road and County Road 100, four miles east of Georgetown, Williamson County</p> <p><b>TYPE OF OPERATION:</b> Public water supply system</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired October 19, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p>TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p>TCEQ Enforcement Coordinator: Ms. Amanda Henry, Water Enforcement Section, MC R-12, (713) 767-3672</p> <p>TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929</p> <p>Respondent: Mr. Doyle Foster, Director, Foster Consolidated Investments, LLC, 2405 County Road 124, Georgetown, Texas 78628</p> <p>Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint</p> <p><input type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 26, 2008 (initial investigation); February 5, 2009 (record review)</p> <p><b>Date of NOE Relating to this Case:</b> February 12, 2009</p> <p><b>Background Facts:</b> The EDP RP was filed on July 6, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDP RP on July 8, 2009. The Respondent failed to answer the EDP RP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>PWS:</b></p> <ol style="list-style-type: none"> <li>Failed to maintain all storage tanks and associated appurtenances in a watertight condition [30 TEX. ADMIN. CODE § 290.43(c)(6)].</li> <li>Failed to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the Facility and its equipment [30 TEX. ADMIN. CODE § 290.46(m)].</li> </ol>	<p><b>Total Assessed:</b> \$168</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$168</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b> N/A</p> <p><b>Person Compliance History Classification:</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days, initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the Facility and its equipment.</li> <li>Within 45 days, submit written certification demonstrating compliance with Ordering Provision no. 1.</li> <li>Within 90 days, repair the leak underneath the ground storage tank and ensure the tank is maintained in a watertight condition.</li> <li>Within 105 days, submit written certification demonstrating compliance with Ordering Provision no. 3.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	19-Feb-2009	<b>Screening</b>	25-Feb-2009	<b>EPA Due</b>	
	<b>PCW</b>	18-Jun-2009				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Foster Consolidated Investments, L.L.C. dba Chaparral III		
<b>Reg. Ent. Ref. No.</b>	RN101219384		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	37340	<b>No. of Violations</b>	2
<b>Docket No.</b>	2009-0406-PWS-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Amanda Henry
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$150

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 12.0% Enhancement **Subtotals 2, 3, & 7** \$18

**Notes** Enhancement is due to two prior Notices of Violation ("NOV") with same violations as those in the current enforcement action and one prior NOV for dissimilar violations.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** 0.0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$130  
Approx. Cost of Compliance \$1,500

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$168

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$168

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$168

**DEFERRAL** 0.0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** \$168

Screening Date 25-Feb-2009

Docket No. 2009-0406-PWS-E

PCW

Respondent Foster Consolidated Investments, L.L.C. dba Chaparral I

Policy Revision 2 (September 2002)

Case ID No. 37340

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101219384

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 12%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement is due to two prior Notices of Violation ("NOV") with same violations as those in the current enforcement action and one prior NOV for dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 12%

Screening Date 25-Feb-2009

Docket No. 2009-0406-PWS-E

PCW

Respondent Foster Consolidated Investments, L.L.C. dba Chaparral III

Policy Revision 2 (September 2002)

Case ID No. 37340

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101219384

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.43(c)(6)

Violation Description Failed to maintain all storage tanks and associated appurtenances in a watertight condition. At the time of the record review, it was documented that during an investigation conducted on August 26, 2008, a leak was observed underneath the ground storage tank.

Base Penalty \$1,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to maintain the storage tank in a water-tight condition could expose the customers of the Facility to a significant amount of contaminants which would not exceed levels protective of human health.

Adjustment \$900

\$100

## Violation Events

Number of Violation Events 1

20 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$100

One quarterly event is recommended, calculated from the record review date, February 5, 2009, to the screening date, February 25, 2009.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$100

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$47

Violation Final Penalty Total \$112

This violation Final Assessed Penalty (adjusted for limits) \$112

## Economic Benefit Worksheet

**Respondent:** Foster Consolidated Investments, L.L.C. dba Chaparral III

**Case ID No.:** 37340

**Reg. Ent. Reference No.:** RN101219384

**Media:** Public Water Supply

**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment	\$500	26-Aug-2008	1-Jan-2010	1.35	\$2	\$45	\$47
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

The delayed cost includes the amount necessary to repair the leak in the ground storage tank. The date required is the investigation date initially documenting the violation. The final date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$500

**TOTAL**

\$47

Screening Date 25-Feb-2009

Docket No. 2009-0406-PWS-E

PCW

Respondent Foster Consolidated Investments, L.L.C. dba Chaparral III

Policy Revision 2 (September 2002)

Case ID No. 37340

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101219384

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.46(m)

Violation Description

Failed to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the Facility and its equipment. At the time of the record review, it was documented that corrosion was present on the suction and discharge lines connecting the service pumps. Additionally, a small amount of water was leaking where one of the pumps was connected to the piping.

Base Penalty \$1,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to properly maintain the working condition and general appearance of the Facility and its equipment could expose customers of the Facility to an insignificant amount of contaminants which would not exceed levels that are protective of human health.

Adjustment \$950

\$50

## Violation Events

Number of Violation Events 1

20 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$50

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$50

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$83

Violation Final Penalty Total \$56

This violation Final Assessed Penalty (adjusted for limits) \$56

## Economic Benefit Worksheet

**Respondent** Foster Consolidated Investments, L.L.C. dba Chaparral III

**Case ID No.** 37340

**Reg. Ent. Reference No.** RN101219384

**Media** Public Water Supply

**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,000	26-Aug-2008	1-Nov-2009	1.18	\$4	\$79	\$83
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

The delayed cost includes the amount necessary to refurbish or replace the suction and discharge line and repair the leak at the connection to the service pumps. The date required is the investigation date initially documenting the violation. The final date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,000

**TOTAL**

\$83

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602624124 Foster Consolidated Investments, L.L.C. Classification: Rating:  
Regulated Entity: RN101219384 CHAPARRAL III Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2460047  
Location: INTERSECTION OF MESHEPPARD ROAD AND COUNTY ROAD 100, FOUR MILES EAST OF GEORGETOWN, WILLIAMSON COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: February 25, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 25, 2004 to February 25, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Amanda Henry Phone: 713-767-3672

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Foster Consolidated Investments, L.L. C.
4. If Yes, who was/were the prior owner(s)? Odie Nehring dba Chaparral III Water System
5. When did the change(s) in ownership occur? 09/26/2003

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	11/01/2004	(339513)
2	04/04/2005	(375920)
3	05/25/2007	(652500)
4	08/24/2007	(652777)
5	11/08/2007	(652925)
6	05/06/2008	(657146)
7	08/29/2008	(701099)
8	01/20/2009	(724112)
9	02/09/2009	(726385)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/03/2004 (339513)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to obtain a sanitary control easement for the well.

Date: 08/29/2008 (701099)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(6)

Description: The water system failed to ensure that a potable water storage tank was thoroughly tight against leakage. The floor of the ground storage tank was leaking.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: The water system failed to maintain the good working condition and general appearance of the piping in the pump house. Paint was peeling off of the pipes connecting the service pumps. Corrosion was present in several places. Additionally, a small leak had developed where the piping connects to one of the service pumps.

Date: 01/21/2009 (724112)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(6)

Description: The water system failed to ensure that a potable water storage tank was thoroughly tight against leakage. The floor of the ground storage tank was leaking.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: The water system failed to maintain the good working condition and general appearance of the piping in the pump house. Paint was peeling off of the pipes connecting the service pumps. Corrosion was present in several places. Additionally, a small leak had developed where the piping connects to one of the service pumps.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
FOSTER CONSOLIDATED  
INVESTMENTS, LLC DBA  
CHAPARRAL III,  
RN101219384**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2009-0406-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Foster Consolidated Investments, LLC dba Chaparral III ("Foster Consolidated").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Foster Consolidated owns and operates a public water supply system located at the intersection of Mesheppard Road and County Road 100, four miles east of Georgetown, Williamson County, Texas (the "Facility").
2. The Facility has 69 service connections and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. During a record review conducted on February 5, 2009, a TCEQ Austin Regional Office investigator documented that Foster Consolidated:
  - a. Failed to maintain all storage tanks and associated appurtenances in a watertight condition. At the time of the record review, it was documented that during an investigation conducted on August 26, 2008, a leak was observed underneath the ground storage tank; and

- b. Failed to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the Facility and its equipment. At the time of the record review, it was documented that corrosion was present on the suction and discharge lines connecting the service pumps. Additionally, a small amount of water was leaking where one of the pumps was connected to the piping.
4. Foster Consolidated received notice of the violations on or about February 17, 2009.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Foster Consolidated Investments, LLC dba Chaparral III" (the "EDPRP") in the TCEQ Chief Clerk's office on July 6, 2009.
6. By letter dated July 6, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Foster Consolidated with notice of the EDPRP. According to the return receipt "green card", Foster Consolidated received notice of the EDPRP on July 8, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Foster Consolidated received notice of the EDPRP provided by the Executive Director. Foster Consolidated failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1. and 2., Foster Consolidated is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Foster Consolidated failed to maintain all storage tanks and associated appurtenances in a watertight condition. At the time of the record review, it was documented that during an investigation conducted on August 26, 2008, a leak was observed underneath the ground storage tank in violation of 30 TEX. ADMIN. CODE § 290.43(c)(6); and
3. As evidenced by Finding of Fact No. 3.b., Foster Consolidated failed to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the Facility and its equipment. At the time of the record review, it was documented that corrosion was present on the suction and discharge lines connecting the service pumps. Additionally, a small amount of water was leaking where one of the pumps was connected to the piping all of which are in violation of 30 TEX. ADMIN. CODE § 290.46(m).

4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Foster Consolidated with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Foster Consolidated failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Foster Consolidated and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Foster Consolidated for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of one hundred sixty-eight dollars (\$168.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b).
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Foster Consolidated is assessed an administrative penalty in the amount of one hundred sixty-eight dollars (\$168.00) for violations of the Texas Health & Safety Code and TCEQ rules. The payment of this administrative penalty and Foster Consolidated's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Foster Consolidated Investments, LLC dba Chaparral III; Docket No.2009-0406-PWS-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Foster Consolidated shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the Facility and its equipment, including but not limited to: refurbishing the suction and discharge lines connecting the service pumps and repairing the leak where the pump is connected to the piping, in accordance with 30 TEX. ADMIN. CODE § 290.46;
- b. Within 45 days after the effective date of this Order, submit written certification as described in the Ordering Provision 2.d. and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a.;
- c. Within 90 days after the effective date of this Order, repair the leak underneath the ground storage tank and ensure the tank is maintained in a watertight condition, in accordance with 30 TEX. ADMIN. CODE § 290.43; and
- d. Within 105 days after the effective date of this Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Ms. Carolyn Runyon, Water Section Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Foster Consolidated. Foster Consolidated is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Foster Consolidated shall be made in writing to the Executive Director. Extensions are not effective until Foster Consolidated receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Foster Consolidated if the Executive Director determines that Foster Consolidated has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Foster Consolidated Investments, LLC dba Chaparral III  
Docket No. 2009-0406-PWS-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS       §

"My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Foster Consolidated Investments, LLC dba Chaparral III" (the "EDPRP") was filed with the Office of the Chief Clerk on July 6, 2009.

I sent the EDPRP to Foster Consolidated at its last known address on July 6, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Foster Consolidated received notice of the EDPRP on July 8, 2009, as evidenced by the signature on the card.

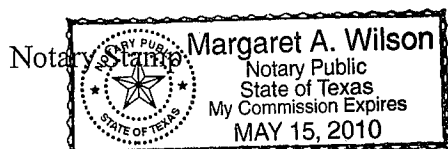
More than 20 days have elapsed since Foster Consolidated received notice of the EDPRP. Foster Consolidated failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference".



Steven M. Fishburn  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 21<sup>ST</sup> day of AUGUST, A.D., 2009.



Notary Signature